

**NATURAL RESOURCE COMMISSION[571]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 456A.19 and 483A.3B(3)“c”(1), the Natural Resource Commission hereby amends Chapter 22, “Wildlife Habitat on Private Lands Promotion Program,” Iowa Administrative Code.

The amendments designate the procedures used by the Department to develop a three-year pilot program whereby the Department shall create, manage, and enhance wildlife habitat on private land in exchange for allowing public access for hunting. Funding is through a Voluntary Public Access and Habitat Incentive Program Grant awarded to the Department by the U.S. Department of Agriculture, as well as from wildlife habitat fees that are designated by the Iowa Code for the development of public hunting opportunities.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 12, 2011, as **ARC 9325B**. The Department held a public hearing on February 3, 2011, in the Wallace State Office Building in Des Moines. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on March 9, 2011, as **ARC 9423B** to extend the comment period and to schedule a second public hearing, which was held on March 29, 2011, also in the Wallace State Office Building. Combined, the comment period for this rule making was 74 days.

The Department received a total of 622 comments. Unfortunately, many of these comments were based on a fundamental misunderstanding of the rules and program. Therefore, these comments cannot be substantively used by the Department in the Adopted and Filed rule making. However, the majority of the comments were insightful. Many comments were in favor of the rule making, but slightly more had criticisms, suggested improvements, or were entirely against it.

Clearly, 304 comments reflected a fundamental misunderstanding of the program, its funding, and its purpose. Many of the commenters were concerned that their taxes would be raised to pay for this program, which is an unwarranted concern. Several were concerned that other programs would be underfunded or eliminated (such as preschool) to pay for this program, which is entirely inaccurate. Still more did not want to see the Department’s Trust Fund depleted to pay for this program. Importantly, the program is entirely funded from a federal grant appropriated by Congress to the U.S. Department of Agriculture for this very purpose, and Iowa’s match to the federal grant is from state wildlife habitat fees, a portion of which is dedicated for public access program development by the State Legislature. (See Iowa Code section 483A.3B(3) allocating moneys to “increase opportunities for recreational hunting on private lands” and stating that such a program shall be established “by rule” and must include “eligibility requirements for the program and procedures for applications for and approval of projects funded under the program.”) In other words, no additional tax revenue is required to fund this program, and these federal grant dollars and state match dollars cannot be used—and importantly, were not being used already—for any other government activity or program. By law, they are designated for wildlife development/public access programs only.

Additionally, several commenters expressed anger that the Department was “forcing” this program on private landowners or “compelling” landowners to participate in the program. This is entirely inaccurate as well. This program is, and has been since its inception, strictly voluntary. Only those landowners who accept the terms of the program will choose to be participants. Finally, some comments contained suggested changes to the landowner/tenant deer license system, which was not part of this rule making and, therefore, not a topic open for discussion.

The 141 comments in favor of the rule making praised the program for creating more access opportunities for Iowa, whose percentage of public land is one of the lowest in the nation; stated that increasing wildlife habitat is beneficial for both game and nongame species and that habitat development is also positive for soil and water conservation generally; praised the access programs of surrounding states and expressed excitement to see one implemented in Iowa; stated that the program is fiscally responsible as it does not impact the state’s General Fund; and stated that the program could

provide economic development opportunities in the state by further increasing hunting and recreational opportunities.

The 177 comments in opposition to the rule making expressed concern about the following topics, each of which is followed by the Department's response:

1. How do you protect landowners from irresponsible hunters?

RESPONSE: Before initiating this program, the Department completed a survey that showed only 10 percent of Iowa landowners would be willing to participate in an access program. The Department proceeded with the program even with this low interest as the amount of moneys available would only fund approximately 3,700 acres of habitat improvement. In other words, the program could not support extremely high interest regardless. Also, this program is strictly voluntary, so only landowners who are willing to accept any and all kinds of hunters on their property will enroll. Finally, the boundaries of the areas open to public hunting will be clearly marked in accordance with the Department's Wildlife Bureau's policy on marking public wildlife management areas, and conservation officers will patrol the areas in the same manner as they patrol public wildlife management areas. The conservation officers will enforce state laws and hunting regulations on these privately owned access areas just like they do on public lands.

2. The Department can't manage existing public land so they don't need even more land to manage.

RESPONSE: First, Department employees continually strive to manage public wildlife lands and to restore them to native communities (prairie, wetlands or forests) in order to benefit the wildlife and to provide recreational opportunities in a more effective and efficient manner. These native communities are those that existed on the landscape previous to settlement. In addition, the Department collaborates with neighbors, county conservation boards, the Army Corps of Engineers, the U.S. Fish and Wildlife Service and other partners to increase work efficiencies and to obtain additional funding sources. Secondly, the Department carefully considered its ability to create and manage an access program before applying for the federal grant. The grant allowed states to apply for up to \$2 million a year for three years, yet the Department applied for only \$500,000 a year for three years to ensure that the workload this program would create could be handled by existing staff. Accordingly, the Department believes the program will be properly managed and successful for those who choose to participate in it.

3. Iowa doesn't need any more wildlife habitat.

RESPONSE: The Department has an Iowa Wildlife Action Plan (IWAP) that was congressionally mandated and published in 2005. This long-range plan outlines conservation strategies to protect Iowa's wildlife resources for the next 25 years. As required by Congress, the IWAP includes a section that evaluates the status of Iowa's wildlife and wildlife habitats. One of the conservation actions identified by the public during the development of this plan was the need to protect, restore, and enhance large areas of wildlife habitat.

4. The rule does not address liability for landowners; why should they take the risk?

RESPONSE: Landowners enrolled in this access program have very broad liability protection pursuant to Iowa Code chapter 461C. This protection has existed for many years and applies to individuals who choose to open up their private land for free (without charge) public recreational purposes. Thus, no new liability protection had to be identified or created to protect participants in this program. Under Iowa Code chapter 461C, "recreational purpose" is defined to include hunting, trapping, and nature study. (See Iowa Code section 461C.2(5).) Significantly, the owner has "no duty of care to keep the premises safe for entry or use by others for recreational purposes . . . or to give any warning of a dangerous condition, use, structure, or activity . . ." (See Iowa Code section 461C.3.) The only way a landowner enrolled in this access program (or otherwise allowing public use of the landowner's property for recreation) would face liability is if the landowner willfully or maliciously failed to guard or warn against a dangerous condition, or if the landowner charged a fee. (See Iowa Code section 461C.6.) Thus, enrolled landowners are assuming very little risk but are reaping a lot of benefit in the form of wildlife habitat development that will still exist on their property after the access agreement has expired.

5. Landowners should be able to say who is on their property for any reason, particularly hunting.

RESPONSE: This program is entirely voluntary. Only landowners who are comfortable with unknown hunters being on their property will choose to participate.

6. There are already federal, state, and other programs that provide funding to landowners for wildlife habitat, so this program is duplicative.

RESPONSE: There are other federal Farm Bill-related programs that focus on wildlife habitat, but this is the only program that provides an incentive (habitat development and management) in exchange for public access for hunters during the appropriate seasons. Therefore, the Department feels this is a unique program in Iowa.

7. The Department did not provide enough information on contract terms and enrollment ranking criteria.

RESPONSE: The Department did not provide this information during the initial comment period, which is why the Department chose to extend the comment period and have a second public hearing so that these documents could be disseminated and commented on by stakeholders. The Department welcomed the feedback it received from the Iowa Farm Bureau concerning the contract and application form. Changes have already been made to those documents in response. The current version of both the contract and the application form are available on the Department's Web site at [http://www.iowadnr.gov/wildlife/privatelands/mgt\\_access.html](http://www.iowadnr.gov/wildlife/privatelands/mgt_access.html), and the contract has been incorporated by reference into this Adopted and Filed rule making. No other comments on these documents were received.

8. The current system in Iowa works. Hunters may ask permission from landowners, and landowners can choose to give permission or not based on their comfort level with the individual. There is no reason to change this approach.

RESPONSE: Most of the individuals that addressed this issue in their comments identified themselves as landowners. Conversely, Department surveys have shown time and time again that hunters who do not own land, or who own very little land, feel that access is a huge problem in Iowa. These individuals state they have a very hard time accessing private land for hunting. Frequently, the only way they get permission is if they live very close to the parcel and have a personal relationship with the owner, but even then permission is not guaranteed. Consequently, access is a major issue in hunter recruitment and retention, and this program provides a way to address that concern. Again, the landowner's participation is strictly voluntary.

9. Hunters will damage private property. Has the Department considered who is responsible for repairing that damage?

RESPONSE: Hunters who damage private land are responsible for that damage. This is the same for damage caused by hunters on public lands. The Department understands it can be challenging to identify the responsible hunter, and regular patrols and enforcement by conservation officers will assist in this effort.

10. Landowners could facilitate access on their land without government involvement if the Legislature would provide liability protection for landowners who charge for hunting on their property.

RESPONSE: This program does not limit an individual landowner's ability to lease hunting rights on their property. This approach limits private access to those who can afford to pay for the lease—frequently a premium dollar amount. Charging a fee for access means the landowner is not protected under Iowa Code chapter 461C. However, as the commenter acknowledged, this is an issue to be taken up by the Legislature, not the Department. Conversely, this program creates free access for all hunters, something that is rare in Iowa since the state owns only less than one percent of the land and water.

11. If the Department decides to keep the program, where will the funding come from to continue the program once the current grant expires?

RESPONSE: This is an excellent question and will have to be further investigated by the Department and the State Legislature. Certainly habitat fees will be available, but other funding sources will likely be needed as well. If the program is successful during its pilot stage, alternative funding sources will be pursued.

12. Hunters will assume all land is open for hunting, not just the areas agreed upon by the landowner.

RESPONSE: Many of Iowa's neighboring states have public hunting access programs (some for several years), and they have not found that there is a misunderstanding of what land is open to public access and what is not. This is aided by well-placed boundary signs which the Department shall promptly install on all enrolled parcels.

13. The number of acres being made available in the program needs to be increased.

RESPONSE: The Department intends to maximize the number of acres enrolled but is limited to the available funds and resources. If the program is successful in its pilot stage, it is hoped that more funds will be available to increase participation later.

14. The program needs to be targeted in a small area of the state so results can be measured.

RESPONSE: Based on the Department's landowner survey, which the Department completed before applying for the federal grant and designing the program, only 10 percent of Iowa landowners expressed interest in enrolling. The Department decided statewide eligibility was important to maximize participation. There are still eligibility criteria, but no geographic regional requirement as this comment suggests. Finally, due to the criteria-based ranking system, the Department feels enrollment will be positive even if the enrolled parcels are far apart.

15. Habitat stamp fees should be spent on obtaining and managing state-owned land; access issues would be better addressed by purchasing more public land.

RESPONSE: As stated above, a certain portion of all wildlife habitat fees are set aside for public access programs pursuant to Iowa law. These funds cannot be used for any other activity or program.

16. The DNR should open up all public land to hunting instead of implementing this program.

RESPONSE: Opening up all public land to hunting is not feasible, as public land has different designations—parks, preserves, wildlife refuges, etc.—and these areas, by law, are not generally open to hunting, although some exceptions apply. This restriction is necessary because the Department must, on the state's very limited public land, provide many different kinds of recreation, some of which cannot occur simultaneously with hunting without presenting a safety risk to users.

17. This program does not benefit very many people of the state.

RESPONSE: The Department feels this program can actually benefit many citizens, including landowners who choose to enroll in the program and all of the hunters who are able to access private lands for hunting. Moreover, many outdoor recreational users, not just hunters, benefit from increased habitat. Certainly with a larger budget, even more citizens could participate in and benefit from the program, and it is hoped, after the pilot program, that will be the case.

In response to the comments received, the following changes have been made to the rule making as published under Notice of Intended Action. These changes:

1. Clarify that grant funds shall be distributed to a Department-hired contractor to complete habitat work, not directly to the landowner. However, if the landowner is properly qualified, the landowner can be hired as the contractor.

2. Incorporate by reference the Department/landowner agreement ("Iowa Management and Access Program Agreements") dated 4-15-11, which is available on the Department's Web site and at the Department's central office in Des Moines.

3. Clarify that no fee shall be charged for public access.

4. Reword the penalty formula for early terminations or breaches to ensure it is easy to understand.

5. Reference and delineate the liability protection afforded participants by Iowa Code chapter 461C.

6. Clarify the eligibility requirements to state that 40 acres of land must be opened to public access.

7. Clarify that the program is not a cost-share program; the Department is solely responsible for all habitat development cost.

8. Add wording to specify that the Department shall install and maintain "No Hunting in Standing Crops" signs in the designated access area at the landowner's discretion.

These amendments implement Iowa Code sections 456A.19 and 483A.3B(3)"c"(1).

These amendments shall become effective June 8, 2011.

The following amendments are adopted.

ITEM 1. Amend **571—Chapter 22**, title, as follows:

**WILDLIFE HABITAT ON PRIVATE LANDS PROMOTION PROGRAM AND  
HABITAT AND PUBLIC ACCESS PROGRAM**

ITEM 2. Adopt the following new Part 1 title before rule 571—22.1(456A,483A):

Part 1  
WILDLIFE HABITAT ON PRIVATE LANDS PROMOTION PROGRAM

ITEM 3. Amend 571—Chapter 22, implementation sentence, as follows:

~~These~~ The rules in Part 1 are intended to implement Iowa Code sections 483A.3 and 456A.16.

ITEM 4. Adopt the following new Part 2 title after rule 571—22.9(456A,483A):

Part 2  
HABITAT AND PUBLIC ACCESS PROGRAM

ITEM 5. Adopt the following new rules 571—22.10(456A,483A) to 571—22.15(456A,483A):

**571—22.10(456A,483A) Purpose and authority.** These rules set forth the procedures to open private lands to public hunting, while providing grant funds to create, manage, and enhance wildlife habitat. Pursuant to Iowa Code section 456A.19, all funds deposited into the state fish and game protection fund shall be expended solely in carrying on the activities of the fish and wildlife division. The department assesses a wildlife habitat fee in conjunction with each resident and nonresident hunting license sold in Iowa, and this fee is deposited into the state fish and game protection fund. At least one dollar from every wildlife habitat fee is required to be spent in a manner that increases landowner participation in federally funded conservation programs that encourage opportunities for recreational hunting on private land.

**571—22.11(456A,483A) Definitions.** For the purpose of this part:

“*Commission*” means the natural resource commission.

“*Department*” means the department of natural resources.

“*Program*” means the habitat and public access program.

**571—22.12(456A,483A) Eligibility.** In order to be eligible for this program, an applicant shall:

1. Have land in Iowa that already contains wildlife habitat or be willing to allow development of wildlife habitat;
2. Enter into an agreement with the department; and
3. Allow public access for hunting without charge on at least 40 acres.

**571—22.13(456A,483A) Application procedures.** Applications will be accepted only from those eligible pursuant to rule 571—22.12(456A,483A).

**22.13(1) Applications.** Applications must be submitted on forms furnished by the department. Applications and agreements must be received by June 1 to provide adequate time for signage on the property and to ensure that the public is aware the area is open to public hunting. However, at the department’s discretion and dependent upon the availability of funds, the application period may be extended. Landowners will be notified in writing within 30 days of submission of an application whether they have been accepted into the program.

**22.13(2) Availability of funds.** Funds available for this program are provided through a Voluntary Public Access and Habitat Incentive Program Grant awarded to the department by the U.S. Department of Agriculture as well as from wildlife habitat fees.

*a.* Funds available for assisting landowners shall be in the department’s budget in accordance with legislative appropriations. Funds will be made available during a fiscal year of July 1 to June 30.

*b.* To maximize the amount of wildlife habitat actually established, the department may accept contributions from any governmental agency or private conservation group to support habitat practices designed to implement the habitat and public access program. Department funds may also be used to match other funding sources or incentive programs.

**22.13(3) *Project review and selection.***

*a.* Projects will be reviewed by the site's regional department wildlife biologist, who, based on the ranking criteria listed in paragraph 22.13(3) "*b.*" will recommend that the commission enter into an agreement with successful applicants.

*b.* Projects will be selected based on the ranked scoring criteria in the application, which prioritize sites with the greatest chance of benefitting wildlife populations and providing adequate recreational hunting opportunities. The criteria include, but are not necessarily limited to: the site's habitat potential; site suitability; priority locations; and other relevant habitat and hunting access factors.

**571—22.14(456A,483A) Agreements.** The commission shall enter into "Iowa Management and Access Program Agreements," version 4-15-11 that is located on the department's Web site at [http://www.iowadnr.gov/wildlife/privatelands/mgt\\_access.html](http://www.iowadnr.gov/wildlife/privatelands/mgt_access.html) as well as through the department's central office, and incorporated by reference herein, with approved landowners to carry out the purposes of this program.

**22.14(1)** Agreement forms shall be provided by the department. The agreement shall explicitly state the terms of the agreement including, but not limited to: the location and size of the habitat improvement; the location and size of the area open for public access hunting; the habitat improvement practices to be completed, including the standards by which the practices shall be accomplished; the schedule for completion and length of time the site shall be open for public recreational hunting; and the reimbursement rate for breaches or early terminations of the agreement as outlined in rule 571—22.15(456A,483A).

**22.14(2)** Grant funds. Habitat development money is only available if an agreement has been signed by both parties. No funds shall be paid directly to the landowner, but rather shall go to a habitat development contractor hired by the department. This is not a cost-share program; the department is solely responsible for all habitat development cost.

**22.14(3)** Agreements may be amended by mutual agreement of both parties.

**22.14(4)** Enrolled lands are subject to game management area hunting rules as contained in 571—Chapter 51. Access and boundary signs shall be placed and maintained on enrolled lands by the department, including "No Hunting in Standing Crops" signs at the landowner's discretion.

**22.14(5)** Nothing in this program or in the agreement alters or waives the liability protection afforded to private landowners opening their lands up to public recreation under Iowa Code chapter 461C. Access given pursuant to a signed agreement shall not constitute a "charge" as defined in Iowa Code section 461C.2. As stipulated in Iowa Code section 461C.4, landowners who participate in this program do not, by opening up their lands to public recreation, do any of the following:

- a.* Extend any assurance that the premises are safe for any purpose;
- b.* Confer upon such person the legal status of an invitee or licensee to whom the duty of care is owed;
- c.* Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

**571—22.15(456A,483A) Cost reimbursement.** Whenever a landowner has been found to be in violation of an agreement as specified in Part II of this chapter, or terminates the agreement early, the landowner shall reimburse the state a prorated amount of the value of wildlife habitat improvement work completed on the property divided by the entire agreement period multiplied by the unfulfilled years of the agreement, e.g., (Total Dollars ÷ Total Years) × Unfulfilled Years = prorated amount owed.

Additionally, the landowner may be assessed early termination penalties that the department may be required to pay a contractor performing the wildlife habitat improvement work on the property.

The rules in Part 2 are intended to implement Iowa Code sections 456A.19 and 483A.3B(3) “c”(1).

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